

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

TIMOTHY E. SCOTT,

Petitioner,

v.

KENNETH QUINN,

Respondent.

CASE NO. C07-0265-JCC

ORDER

This matter comes before the Court on Petitioner Timothy Scott’s “Notice of Civil Appeal” (Dkt. No. 36), which the Court construes as a Motion for a Certificate of Appealability (“COA”) of this Court’s denial of Mr. Scott’s motion to reopen his habeas corpus petition (Dkt. No. 31). Having reviewed Petitioner’s motion and the record and determined that oral argument is not necessary, the Court hereby DENIES Petitioner’s motion for a COA.

**I. LEGAL STANDARD**

The Antiterrorism and Effective Death Penalty Act requires that an unsuccessful habeas petitioner be granted a COA before he can appeal a district court’s denial of habeas relief to the Court of Appeals. 28 U.S.C. § 2253(c). Moreover, Petitioner must initially make an application for a COA in the district court before the Court of Appeals may act on Petitioner’s request. *United States v. Mikels*, 236 F.3d 550,

552 (9th Cir. 2001) (referencing requirements of both FED. R. APP. P. 22(b) and 9TH CIR. R. 22-1(a)). If no express request for a COA is made, the district court is to construe a notice of appeal as a request for a certificate. *See Slack v. McDaniel*, 529 U.S. 473, 483 (2000); *United States v. Asrar*, 116 F.3d 1268, 1270 (9th Cir. 1997). The Court may issue a COA only if Petitioner “has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).

## II. ANALYSIS

Petitioner makes no argument as to why reasonable jurists would find the Court’s decision debatable or wrong. In fact, Petitioner makes no argument at all; his Notice of Appeal is nothing more than a notice that he is appealing. Because Petitioner fails to make any argument, the Court cannot find that he has met his burden.

## III. CONCLUSION

Petitioner has failed to make a substantial showing of the denial of a constitutional right. Accordingly, the Court DENIES Petitioner’s motion for a COA (Dkt. No. 36).

SO ORDERED this 8TH day of January, 2008.

  
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John C. Coughenour  
United States District Judge